

1 AN ACT relating to gift cards.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 434.560 is amended to read as follows:

4 As used in KRS 434.550 to 434.730, unless the context otherwise requires:

- 5 (1) "Automated banking device" means any machine which when properly activated by
6 a credit card, debit card or personal identification code will perform any of the
7 following services:
- 8 (a) Dispense money as a debit to the cardholder's savings or checking account; or
 - 9 (b) Print the cardholder's savings or checking account balances on a statement; or
 - 10 (c) Transfer funds between a cardholder's savings and checking account; or
 - 11 (d) Accept payments on a cardholder's loan; or
 - 12 (e) Dispense cash advances on an open end credit or a revolving charge
13 agreement; or
 - 14 (f) Accept deposits to a customer's savings or checking account; or
 - 15 (g) Receive inquiries of verification of checks and dispense information which
16 verifies that funds are available to cover said checks; or
 - 17 (h) Cause money to be transferred electronically from a cardholder's account to
18 an account held by any business, firm, retail merchant, corporation, or any
19 other organization;
- 20 (2) "Cardholder" means:
- 21 **(a) For a credit or debit card,** the person or organization named on the face of a
22 credit or debit card to whom or for whose benefit the credit or debit card is
23 issued by an issuer; **or**
 - 24 **(b) For a gift card, any person or organization to whom a physical or virtual**
25 **gift card is issued through a purchase, or who receives a gift card from a**
26 **willing party;**
- 27 (3) "Credit card" means any instrument or device, whether known as a credit card,

1 credit plate, credit number or by any other name, issued by an issuer for the use of
2 the cardholder in obtaining money, goods, services or anything else of value on
3 credit;

4 (4) "Debit card" means any instrument or device, known by any name, issued with or
5 without fee by an issuer for the use of the cardholder in obtaining money, goods,
6 services and anything else of value, payment of which is made against funds
7 previously deposited by cardholder;

8 (5) "E.F.T. system" means an electronic funds transfer system whereby funds are
9 transferred electronically from a cardholder's account to any other account;

10 (6) "Expired credit card" means a credit card which is no longer valid because the term
11 shown on it has expired;

12 (7) "Expired debit card" means a debit card which is no longer valid because the term
13 shown on it has expired;

14 (8) **"Gift card" means a card, code, or device that:**

15 **(a) Is issued on a prepaid basis primarily for personal, family, or household**
16 **purposes in a specified amount, regardless of whether that amount may be**
17 **increased or reloaded in exchange for payment; and**

18 **(b) May be redeemable upon presentation by a cardholder at a single merchant**
19 **or group of merchants, or at multiple unaffiliated merchants within a**
20 **payment card network;**

21 **(9) "Gift card redemption information" means information unique to each gift card**
22 **which allows the cardholder to access, transfer, or spend the funds on that gift**
23 **card;**

24 **(10)** "Issuer" means the business organization or financial institution which issues a
25 credit, ~~for~~ debit, **or gift** card or its duly authorized agent;

26 **(11)**~~(9)~~ "Merchant" means an owner or operator of any retail mercantile establishment
27 or any agent, employee, lessee, consignee, officer, director, franchisee, or

1 independent contractor of such owner or operator. "Merchant" also means:

2 (a) A person who receives from an authorized user of a payment card, or
3 someone the person believes to be an authorized user, a payment card or
4 information from a payment card, or what the person believes to be a payment
5 card or information from a payment card, as the instrument for obtaining,
6 purchasing, or receiving goods, services, money, or anything else of value
7 from the person; or

8 (b) ***A person engaged in the business of selling gift cards to consumers;***

9 (12)~~[(10)]~~ "Participating party" means a business organization or financial institution, or
10 any duly authorized agent of such business organization or financial institution,
11 which is obligated by contract to acquire from a person, business organization or
12 financial institution providing money, goods, services or anything else of value, a
13 sales slip, sales draft or other instrument evidencing a credit, ~~or~~ debit, or gift card
14 transaction and from whom the issuer is obligated by contract to acquire or
15 participate in such sales slip, sales draft or other instrument;

16 (13)~~[(11)]~~ "Payment card" means a credit card, charge card, debit card, or any other card
17 that is issued to an authorized card user and that allows the user to obtain, purchase,
18 or receive goods, services, money, or anything else of value from a merchant;

19 (14)~~[(12)]~~ "Presentation or presents" as used herein shall be construed to define those
20 actions taken by a cardholder or any person to introduce a credit or debit card into
21 an automated banking device or merely displaying or showing a credit or debit card
22 to the issuer, a person or organization providing money, goods, services, or
23 anything else of value, or any other entity with intent to defraud;

24 (15)~~[(13)]~~ "Receives" or "receiving" means acquiring possession or control of a credit or
25 debit card;

26 (16)~~[(14)]~~ "Reencoder" means an electronic device that places encoded information from
27 the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a

1 different payment card;

2 ~~(17)~~~~(15)~~ "Revoked credit card" means a credit card which is no longer valid because
3 permission to use it has been suspended or terminated by the issuer;

4 ~~(18)~~~~(16)~~ "Revoked debit card" means a debit card which is no longer valid because
5 permission to use it has been suspended or terminated by the issuer; and

6 ~~(19)~~~~(17)~~ "Scanning device" means a scanner, reader, or any other electronic device that
7 is used to access, read, scan, obtain, memorize, or store, temporarily or
8 permanently, information encoded on the magnetic strip or stripe of a payment card.

9 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 434.550 TO 434.730 IS
10 CREATED TO READ AS FOLLOWS:

11 **(1) A person who, with intent to defraud a cardholder, a person or organization**
12 **providing money, goods, services, or anything else of value, or any other person,**
13 **tampers with a gift card or its packaging, or uses or possesses a gift card with**
14 **knowledge that the gift card has been tampered with, is guilty of a Class D felony.**

15 **(2) A person who possesses two (2) or more gift cards which have been tampered**
16 **with is presumed to possess the same with knowledge that they have been**
17 **tampered with and with the intent to defraud.**

18 ➔Section 3. KRS 434.580 is amended to read as follows:

19 (1) **(a)** A person who takes a credit, ~~for~~ ~~debit,~~ **or gift** card from the person,
20 possession, custody or control of another without the consent of the
21 cardholder, ~~for~~ ~~of~~ the issuer, **or, for a gift card, the merchant,** or who, with
22 knowledge that it has been so taken, receives the credit, ~~for~~ ~~debit,~~ **or gift** card
23 with intent to use it or to sell it or to transfer it to a person other than the
24 issuer, ~~for~~ the cardholder, **or, for a gift card, the merchant,** is guilty of a
25 misdemeanor and is subject to the penalties set forth in subsection (1) of KRS
26 434.730.

27 **(b)** Taking a credit, ~~for~~ ~~debit,~~ **or gift** card without consent includes obtaining it

1 by conduct defined or known as statutory larceny, common-law larceny by
2 trespassory taking, common-law larceny by trick, embezzlement, or obtaining
3 property by false pretenses, false promise or extortion.

4 (2) A person who has in his or her possession or under his or her control two (2) or
5 more credit, ~~or~~ debit, or gift cards which have been taken or obtained in violation
6 of subsection (1) of this section is presumed to know that the credit, ~~or~~ debit, or
7 gift cards have been so taken or obtained.

8 ➔Section 4. KRS 434.650 is amended to read as follows:

9 (1) (a) A person who, with intent to defraud the issuer, a participating party, a
10 person~~[,]~~ or organization providing money, goods, services, or anything else
11 of value, or any other person:

12 1. Uses for the purpose of obtaining money, goods, services, or anything
13 else of value a credit or debit card obtained or retained in violation of
14 KRS 434.570 to 434.650, or any of such sections, or a credit or debit
15 card which he or she knows is forged, expired, or revoked;

16 2. Obtains money, goods, services, or anything else of value by
17 representing without consent of the cardholder that he or she is the
18 holder of a specified card or by representing that he or she is the holder
19 of a card and such card has not in fact been issued;

20 3. Uses a credit or debit card obtained or retained in violation of KRS
21 434.570 to 434.650, or any of such sections, or a credit or debit card
22 which he or she knows is forged, expired, or revoked, as authority or
23 identification to cash or attempts to cash or otherwise negotiate or
24 transfer a check or other order for payment of money, whether or not
25 negotiable, if said negotiation or transfer or attempt to negotiate or
26 transfer would constitute a crime under KRS 514.040 or 516.030;~~or~~

27 4. Deposits into his or her account or any account, via an automated

1 banking device, a false, fictitious, forged, altered, or counterfeit check,
2 draft, money order, or any other such document not his or her lawful or
3 legal property; or

4 **5. Obtains a gift card or gift card redemption information from a**
5 **cardholder, issuer, or merchant by means of false or fraudulent**
6 **pretenses, representations, or promises;**

7 is guilty as provided in paragraph (b) of this subsection.

8 (b) The penalty for violating paragraph (a) of this subsection is a Class B
9 misdemeanor unless:

10 1. The value of all money, goods, services, or other things of value
11 obtained in violation of this section over a six (6) month period is five
12 hundred dollars (\$500) or more but is less than one thousand dollars
13 (\$1,000), in which case it is a Class A misdemeanor;

14 2. The value of all money, goods, services, or other things of value
15 obtained in violation of this section over a six (6) month period is one
16 thousand dollars (\$1,000) or more but is less than ten thousand dollars
17 (\$10,000), in which case it is a Class D felony;

18 3. The person has three (3) or more convictions under subparagraph 1. of
19 this paragraph within the last five (5) years, in which case it is a Class D
20 felony. The five (5) year period shall be measured from the dates on
21 which the offenses occurred for which the judgments of conviction were
22 entered; or

23 4. The value of all money, goods, services, or other things of value
24 obtained in violation of this section over a six (6) month period is ten
25 thousand dollars (\$10,000) or more, in which case it is a Class C felony.

26 (2) A person who receives money, goods, services, or anything else of value as a result
27 of a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any

1 other such document having been deposited into an account via an automated
2 banking device, knowing at the time of receipt of the money, goods, services, or
3 item of value that the document so deposited was false, fictitious, forged, altered, or
4 counterfeit or that the above described deposited item was not his lawful or legal
5 property, violates this subsection and is subject to the penalties set forth in
6 subsection (1) of this section.

7 (3) Knowledge of revocation shall be presumed to have been received by a cardholder
8 four (4) days after it has been mailed to him or her at the address set forth on the
9 credit or debit card or at his or her last known address by registered or certified
10 mail, return receipt requested, and, if the address is more than five hundred (500)
11 miles from the place of mailing, by air mail. If the address is located outside the
12 United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice
13 shall be presumed to have been received ten (10) days after mailing by registered or
14 certified mail.